IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1254 OF 2005
IN
FIRST APPEAL NO.1238 OF 2006

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OFFICE NOTES, OFFICE MEMORANDUM OF CORAM, APPEARANCES, COURT'S ORDERS OR DIRECTIONS AND REGISTRAR'S ORDERS	COURT'S OR JUDGES ORDERS

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Shri N.M. Godbole for the Applicant.

CORAM : A. S. OKA, J.
DATE : JULY 21, 2006.

P.C.:

1. Heard Shri Godbole appearing for the Applicant. The Applicant has taken exception to the judgment and award made under section 166 of the Motor Vehicles Act, 1988 by the Motor Accident Claims Tribunal. The contention of the Applicant/Appellant is that the vehicle involved in the accident was not validly insured with the Applicant/Appellant on the date of accident. The said contention has been over-ruled by the learned Member of the Tribunal.

2. This is not a case where a leave under section 170 of the said Act of 1988 was granted in favour of the Applicant.

Even if the Applicant succeeds in the Appeal, the award which is made against the insured will remain. In such event, the Appellant can always recover the amount from the insured. In the fight between the insurer and insured, original claimants should not suffer. Hence, Application is rejected. It is however made clear that in case the Applicant succeeds in Appeal, it will be open for the Applicant to recover the amount of compensation from the insured.

JUDGE